

REMARKS/ARGUMENTS

Reexamination of the captioned application is respectfully requested.

A. SUMMARY OF THIS AMENDMENT

By the current amendment, Applicants basically:

1. Editorially amend the specification.
2. Editorially amend claims 1 – 5, 8 – 18, 19, 20, and 38.
3. Add new claim 50.
4. Amend dependent claim 7 to be dependent upon new dependent claim 50, thereby overcoming the objection of enumerated paragraph 4 of the office action.
5. Respectfully traverse the rejection under 35 USC §101.
6. Respectfully traverse all prior art rejections.

B. THE CLAIMS ARE STATUTORY

Claim 38 stands under 35 USC §101, allegedly because claim 38 is directed to non-statutory subject matter (see enumerated paragraph 5 of the Office Action). This rejection is respectfully traversed for at least the following reasons.

Dependent claim 38 has been amended to specify that the computer program product is stored on a computer readable storage medium or in a computer readable storage device. The amendment renders the claim statutory, and is supported, e.g., by claim 39.

C. PATENTABILITY OF THE CLAIMS

Claims 1-49 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent 5,732,076 to Ketsoglou et al in view of U.S. Patent 5,793,759 to Rakib et al. All prior art rejections are respectfully traversed for at least the following reasons.

The office action appears to opine that the method of claim 1 differs from U.S. Patent 5,732,076 to Ketsoglou et al only by the feature "using the at least one transmission gap for communications according to the second communications standard type." The office action also alleges that this differing feature is disclosed in analogous fashion by U.S. Patent 5,793,759 to Rakib et al.

In actuality, the subject matter of independent claim 1 distinguishes over U.S. Patent 5,732,076 to Ketsoglou et al for more than one reason. Example distinctions are listed and separately discussed below:

First, claim 1 defines that the communication according to the first communications standard type is done by "using a first frame structure including at least one transmission gap". "Including" clearly means that the transmission gap comprises the first frame structure. To be more exact, and as can be easily gathered from the description, the transmission gap is part of one or more slots of the first frame structure. This transmission gap is not used for communications if the first frame structure is used as originally intended.

For communications according to two different communications protocols, Ketsoglou discloses the use of a series of first time frames 1080 and a series of second time frames 1081. Consecutive ones of the first time frames 1080 are separated by a single time gap 1082 (col. 24, l. 13 to 17). Time gap 1082 does not form a part of one of the first time frames 1080 and, thus, cannot be viewed as equivalent to the transmission

gap in the sense of current claim 1 (see Ketseoglou, col. 24, l. 41 "... time gaps may be inserted between time slots of either time frame..."; obviously "between" is different from "including"). Rather, first time frames 1080 do not include any part which is not used for communications when using the first time frames 1080 as originally intended (i.e. without using the invention of Ketseoglou).

Second. Ketseoglou does not disclose the use of first time frames 1080 separated by time gaps 1082 in combination with a control of the use of the first time frames 1080 in dependence of communications to be performed using second time frames 1081. Any possible control by Ketseoglou is disclosed by Ketseoglou only with respect to time slots in combination with which no time gaps are used (see col. 31, l. 58 to col. 32, l. 35).

Third. current claim 1 defines that the control of the use of the first communications resources is accomplished "by controlling the number and/or duration of the at least one transmission gap" (i.e. the transmission gaps used for communications). Besides the fact that the time gaps 1082 according to Ketseoglou cannot be compared with the transmission gaps according to claim 1, Ketseoglou fails to teach that the duration of the time gaps 1082 is variable. On the contrary, for Ketseoglou the duration of the time gaps has a fixed, specified relation to the duration of the second time frames 1080 (see col. 24, l. 19 to 21). A closer study of Ketseoglou (col. 31, l. 56 to col. 32, l. 34) reveals undoubtedly that the controlling of the use of the first communications resources is accomplished by "transferring" time slots between the first and second communications resources (see e.g., col. 32, l. 3 to 6, "... give up time slots ...", "... assigns one or more of its time slots to the other base station units...", "... changing its free slot index ...", col. 32, l. 24-25, "... time slots allocated dynamically between ..."; and l. 29 "... transfer time slots to the other...").

Thus, even hypothetically assuming Ketseoglou could be relevant for transmission gaps according to claim 1, Ketseoglou cannot be considered to be directed to the use of time gaps in a manner in dependence of communications to be performed on the basis of the second communications standard type, i.e. the second time frames 1081.

In conclusion, the method according to claim 1 differs from Ketseoglou in more aspects than what the office action has identified. It is also submitted that Rakib does not disclose the combination of all these distinctive aspects.

D. MISCELLANEOUS

In view of the foregoing and other considerations, all claims are deemed in condition for allowance. A formal indication of allowability is earnestly solicited.

The Commissioner is authorized to charge the undersigned's deposit account #14-1140 in whatever amount is necessary for entry of these papers and the continued pendency of the captioned application.

Should the Examiner feel that an interview with the undersigned would facilitate allowance of this application, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: /H. Warren Burnam, Jr./

H. Warren Burnam, Jr.
Reg. No. 29,366

HWB:lsh
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100